



**Virginia  
Regulatory  
Town Hall**

## Notice of Intended Regulatory Action Agency Background Document

<b>Agency Name:</b>	Virginia Department of Health
<b>VAC Chapter Number:</b>	12 VAC 5-615-10 et sec.
<b>Regulation Title:</b>	AOSE Regulations
<b>Action Title:</b>	Replace emergency regulations with final regulations
<b>Date:</b>	January 10, 2000

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

### Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The Department of Health is required to approve or deny site evaluations conducted by Authorized Onsite Soil Evaluators (AOSEs) within time frames established by the Code of Virginia. These regulations establish the qualifications for becoming an AOSE, reporting requirements and standards of practice for AOSEs, and provide administrative actions that the Department will take in response to an AOSE application.

### Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

Authority for these regulations is found in §32.1-163.5 and §32.1-164 of the Code of Virginia. These sections require that the Department establish a program for qualifying individuals as AOSEs. The program shall include at a minimum, approved training courses, written and field tests, application fees, renewal fees and procedures for listing, de-listing, and reinstating individuals as AOSEs. To contain costs the program is to use or enhance the written and field tests given to VDH employees.

The Code also establishes time limits for responding to AOSE applications. The time limits are 15 days for a single lot construction permit, 20 days for individual certification letters, and 60 days for multiple lot certification letters and subdivisions. The law requires no field review and the regulations provide only for a paper review prior to issuing an approval. Failure to meet these deadlines results in a properly filed application being “deemed approved” without review.

Finally, the Code of Virginia allows a professional engineer working in consultation with an AOSE to make application to the Department for an approval. Such an application is subject to the same time frames and is deemed approved if the time frames are not met. The Code reiterates the requirement to be a professional engineer in order to practice engineering.

### Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

These are new regulations that will replace emergency regulations. No revisions are being proposed at this time; however, this is subject to public consensus review prior to proposing regulations.

### Alternatives

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

The Code of Virginia (see §32.1-164.G) establishes that the Board of Health will develop an AOSE program and provides minimum guidelines for what the program will contain. Paragraph H.2 of this section requires that the Board shall promulgate regulations. No other alternative has been considered beyond an interim implementation of the program by policy. This interim implementation was done to provide guidance for a mandated interim program established in paragraph G of §32.1-164.

### Family Impact Statement

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

This regulation will have no practical effect on the authority and rights of parents relative to the education, nurturing, and supervision of their children. It may encourage economic self-sufficiency by creating economic opportunities for qualified individuals to work outside of the Department of Health. Further, those with an interest in building a home may be able to obtain a health permit without a site visit by the Department, thereby at least creating an image of independence from governmental bureaucracy. This regulation should not effect marital commitments. In terms the effect of the regulation on disposable family income, there is no required cost. The cost of obtaining a permit by using an AOSE will add an estimated one-time \$300 to \$700 expense to the process; however, permits may still be obtained directly from the Department without incurring the expense of an AOSE. In general, when an AOSE is used to obtain a permit, the applicant finds the time savings sufficient to offset the extra cost.